

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: 202.739.3000
Fax: 202.739.3001
www.morganlewis.com

William E. Baer
202-739-5454
webaer@morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

4

DOCKETED
USNRC

May 20, 2004 (2:40PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

May 20, 2004

SENT BY: E-mail to SECY@nrc.gov

Ms. Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Proposed Interim Enforcement Policy for
Pilot Program on the Use of Alternative
Dispute Resolution in the Enforcement
Program Request for Comments
(69FR21166)

ATTN: Rulemakings and Adjudications Staff

Dear Ms. Vietti-Cook:

On April 20, 2004, the NRC issued its "Proposed Interim Enforcement Policy for Pilot Program on the Use of Alternative Dispute Resolution in the Enforcement Program" (Interim ADR Policy), and requested comments on that proposed policy. See 69 Federal Register 21166, April 20, 2004. The comments below are submitted on behalf of American Electric Power Company, STP Nuclear Operating Company, and TXU Generation Company.

We strongly support the proposed interim ADR policy, and urge its prompt implementation. The policy provides clear, simple procedures for the conduct of ADR, and will likely result in resolution of potential enforcement matters in a manner that is fair, timely, efficient, and supportive of nuclear safety. It fairly resolves the comments and concerns expressed during previous requests for comment and stakeholder meetings. After several years of exploration and discussion of the use of ADR, it is time for these techniques to be implemented.

We have the following comments, more in the nature of clarification, to the proposed interim ADR policy:

- The interim ADR policy should make clear that any instance of settlement between the parties will result in the conclusion of NRC enforcement activities with respect to the matters settled, whether this settlement is the result of the activities of a neutral mediator or not. The proposed policy notes that "[I]n general, settlement at any time without the use of a neutral is not precluded by the ADR program." 76 *Federal Register* 21170. The policy also notes that if a licensee arrives at a settlement with an employee under a licensee program for ADR, and

Ms. Annette L. Vietti-Cook
May 20, 2004
Page 2

Morgan, Lewis
& Bockius LLP

voluntarily reports the settlement to the NRC, the NRC will review the settlement and, if it does not contain any prohibited restrictions, will refrain from initiating any investigation or enforcement action. An additional note should be added to make explicit that a settlement reached among the parties without the aid of a neutral will have the same effect as a settlement reached with the help of a neutral.

- The policy should note that settlement documents submitted to the NRC for review need not include names of individuals, numerical financial terms, or other information that would reveal specific personnel information or actions. This will preclude any such personal, private, or financial information from being publicized, and will make it more likely that parties will be willing to settle. This practice would be consistent with the practice of other federal agencies and the courts.

We appreciate the opportunity to provide comments on the proposed ADR policy. If you would like further information or would like to discuss these comments, please call me at (202) 567-5454.

Sincerely,

William E. Baer, Jr.
William E. Baer, Jr. *by [signature]*

WEB/emh